

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Digital Output Protection Technology and Recording Method Certifications)	MB Docket No. 04-60
)	
Vidi Recordable DVD Protection System)	

**RESPONSE TO THE APPLICATION OF PHILIPS ELECTRONICS NORTH
AMERICA CORP. AND HEWLETT-PACKARD CO. FOR INTERIM
AUTHORIZATION OF VIDI RECORDABLE DVD PROTECTION SYSTEM BY THE
MOTION PICTURE ASSOCIATION OF AMERICA, INC., METRO-GOLDWYN-
MAYER STUDIOS INC., PARAMOUNT PICTURES CORPORATION, SONY
PICTURES ENTERTAINMENT INC., TWENTIETH CENTURY FOX FILM
CORPORATION, UNIVERSAL CITY STUDIOS LLLP, THE WALT DISNEY
COMPANY, AND WARNER BROS. ENTERTAINMENT INC.**

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April 6, 2004

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The Motion Picture Association of America, Inc. (“MPAA”), Metro-Goldwyn-Mayer Studios Inc., Paramount Pictures Corporation, Sony Pictures Entertainment Inc., Twentieth Century Fox Film Corporation, Universal City Studios LLLP, The Walt Disney Company, and Warner Bros. Entertainment Inc. (the “MPAA Parties”) hereby file this response to the application of Philips Electronics North America Corp. (“Philips”) and Hewlett-Packard Co. (“HP”) (collectively the “Applicants”) to have Vidi Recordable DVD Protection System (“Vidi”) be approved as an Authorized Recording Method on an interim basis for Marked and Unscreened Content (the “Application”). The MPAA Parties express support for the Application upon the expectation that Applicants will respond to and/or clarify the issues raised below in their reply filing.

We note at the outset that this proceeding, and the Commission's review of the content protection technologies, related functionalities, and licenses submitted in this proceeding, are concerned only with whether the proposal meets the interim requirements the Commission identified for the protection of digital broadcast television content. This response, therefore, is based on the understanding that if the Commission decides to authorize Vidi on an interim basis for use in protecting Marked and Unscreened Content, that authorization extends only to the use of Vidi in the Broadcast Flag application.¹ In addition, we have reserved comment on the bulk of licensing terms, trusting that the marketplace negotiations of the agreements will produce acceptable business terms.

With the above caveat noted, with respect to authorization of Vidi on an interim basis, MPAA supports the Application, subject to the comments below. In particular, the MPAA applauds and notes the work of Philips and Hewlett-Packard to develop Vidi as an example how the Broadcast Flag regulation is already stimulating competitive technological innovation in content protection. Technologies offering effective content protection will continue to pave the way for consumers to watch movies in high quality digital picture and sound through innovative delivery channels. Further, as the MPAA has explained elsewhere, any content protection technology must limit redistribution to the device's Local Environment through the use of reasonable and affirmative constraints. Vidi places reasonable and affirmative constraints on the scope of redistribution of Marked and Unscreened Content because it cryptographically binds the

¹ For example, the interim authorization of a content protection technology would not determine in any way whether that technology appropriately protects content with copy restrictions delivered through high-definition analog outputs, which was not the subject of the Broadcast Flag proceeding.

content to the DVD recordable media² and then authorizes only protected digital outputs during playback that provide effective redistribution control.

The MPAA Parties request that the Applicants respond to and/or clarify the following issues in its reply filing in a satisfactory manner to facilitate approval of Vidi technology by the Commission in this proceeding.

I. Vidi Must Assert Upstream Controls over Downstream HDCP Functions

Vidi, although not yet launched, has the capability to operate with other digital outputs, including HDCP. Should the FCC approve HDCP as an interim protected digital output technology, the submitted licensing terms should be amended to reflect the unique obligations incumbent on technologies upstream to HDCP outputs. Applicants must clarify how the proposed technology will ensure that an upstream Covered Demodulator Product properly controls the flow of Marked and Unscreened content being sent to a HDCP output. Applicants have identified HDCP as a potential protected digital output downstream from Applicants' content protection technology. Due to the unique operational aspects of the HDCP technology, if Applicants' content protection technology authorizes HDCP as a protected downstream output, any Covered Demodulator Product using Applicants' technology must assert upstream control of the flow of Marked and Unscreened Content being sent to a HDCP function. This is because the HDCP function can not assert control over the output of (or prevent

² Without prejudice to the legal rights of content owners, the Broadcast Flag system does not constrain the movement of removable physical recordings of Marked or Unscreened Content. That is due both to the limits of technology and, most importantly, to the tedium, cost, delay, "one-to-one" nature, and related practical factors that severely limit the occasions and impact of physical transfer. The extraordinary ease, immediacy, extensibility, and both direct and aggregate "one-to-many" breadth of digital *re-transmission* is another matter entirely, as clear and distinct as the difference between mailing a VHS or other copy of a movie to a friend and *broadcasting* the same movie to an audience or group through open or closed circuit. As indicated above, the proposed secure recording technology and accompanying license include reasonable and effective restrictions on such retransmission from the recordings.

the delivery of) Marked and Unscreened Content to a HDCP device, but can only signal upstream to the proposed technology when the HDCP function is actively engaged and able to deliver protected content. By way of example, when the HDCP function performs revocation processing and determines that a revoked HDCP device is connected, the HDCP function will relay this information upstream to the Applicants' content protection technology, but does not have the ability to turn off its output to stop the flow of content to the revoked device. The HDCP technology relies on the upstream content protection technology to turn off the flow of content when it receives this message from the HDCP function.

In order to ensure the security of a system with multiple devices and in particular the effectiveness of any revocation process, if HDCP is an authorized downstream output from Applicants' technology, Applicants should require this upstream control function as part of their licensing terms with any adopter manufacturing a Covered Demodulator Product.

For example, adding the following language to the compliance rules could accomplish this:

A Covered Demodulator Product may pass Marked or Unscreened Content to an HDCP protected DVI or HDMI output, only if such Covered Demodulator Product (a) reads the received HDCP system renewability information, if present, and passes it to the HDCP Source function as a System Renewability Message, and (b) verifies that the HDCP Source Function is engaged and able to deliver Marked and Unscreened Content in protected form, which means (i) HDCP encryption is operational on such output, (ii) processing of the valid received System Renewability Message associated with such content, if any, has occurred as defined in the HDCP Specification and (iii) there is no HDCP Display Device or Repeater on such output whose Key Selection Vector is in such System Renewability Message. Capitalized terms used in the foregoing but not otherwise defined in the Specifications or the License shall have the meaning set forth in the HDCP Specification and HDCP License Agreement offered by Digital Content Protection, LLC.

II. Applicants Should Clarify That Vidi Imposes No Obligations on Content Providers, Broadcasters, Consumers, or Others

The Vidi technology could become one of many technologies included in the Broadcast Flag system. All approved technologies will receive broadcast content marked with the Broadcast Flag and may be invoked or “triggered” in response to the Broadcast Flag in various devices, such as set top boxes and digital video recorders. Content providers, broadcasters, and others currently cannot direct which approved technologies may receive broadcast content marked with the Broadcast Flag or which approved technologies may get triggered by the Broadcast Flag. Because content providers, broadcasters, and others exercise no direct control over the actual use of Vidi (or any of the other potential Broadcast Flag technologies), Applicants should clarify that broadcasters, content providers, and others who do not take a license to the Vidi technology but who mark or broadcast content with a Broadcast Flag that triggers the Vidi technology are not subject to any obligations to Applicants, including but not limited to intellectual property licensing obligations. Furthermore, Applicants should certify, as a condition of interim authorization, that no consumer transmitting or receiving content marked with the Broadcast Flag signal will incur any claim of obligation from Applicants.

III. Any Proposed Changes to Proposed Technology Must be Approved in Appropriate Change Management Procedures

The licensing terms provided with the Application state that Vidi will interoperate with all FCC-approved digital outputs in US implementations. The issue of technology authorizations is one that needs to be carefully considered and managed by the Commission. If the wrong technologies are authorized, or if those technologies change their licenses and specifications in unforeseen ways, the entire scheme the Commission has worked so hard to create may come undone. That is why the Commission must retain jurisdiction over all changes to the

technologies it authorizes. While the license agreement affords content owners some participation in a Change Management procedure, the Commission should require, as a condition of authorization of Vidi for use on an interim basis, that any changes to the technology or its license, including especially additional approved output or recording technologies for use in downstream devices, receive prior Commission approval before the changed technology is allowed to be marketed and used.

Further, in order to ensure that the change management provisions are a mechanism to manage the overall effectiveness of the system, the Applicants should ensure that the change management provisions govern *any* changes to use of the intellectual property included in the system. Philips notes that it may define extensions for Vidi using much of same technical elements and may offer such extensions under different agreements. This approach, however, may result in the circumvention of change management provisions simply by issuing a new agreement. To avoid this nullifying effect, the license should identify all agreements or uses reading upon the same intellectual property (“operative protection agreements”) or necessary for its protection, and subject any new agreements to the change management provisions outlined. Finally, the Applicants should modify the licensing terms to ensure that the arbitration contemplated by the provisions represents a fair and reasoned approach to resolving disputes. For example, one provision specifies that *if an arbitration for disputed changes takes longer than 180 days (except if delay due to Philips), the change can be automatically approved*. This seems to ignore the fact that more complex issues may take longer to address, and could effectively curtail the important review of issues.

IV. License Agreement Should Be Modified to Reflect Meaningful Participation by Content Owners in Change Management and Enforcement

While the Vidi license agreement affords content owners some participation in a Change Management and enforcement procedures, the provisions contain ambiguities that have the potential erode any meaningful participation. The MPAA Parties request that Vidi modify its change management provisions to reflect customary procedures, as evidenced by the publicly available licenses of other similar technologies proposed in this proceeding.

For example, the provisions should clarify that the change management provisions govern *any* changes to use of the intellectual property included in the system. Philips notes that it may define extensions for Vidi using much of same technical elements and may offer such extensions under different agreements, which could result in the circumvention of change management provisions simply by issuing a new agreement. Similarly, the arbitration procedures establish a default judgment in favor of Philips if the arbitration exceeds 180 days, which may ignore the fact that more complex issues may take longer to address, and could effectively curtail the important review of issues. Unless the provisions are modified to clarify the right of content owners to effective participation in change management procedures, the MPAA Parties request that the FCC require the Applicant to undergo a re-certification procedure for all changes to the Vidi technology and its protection agreements. Finally, the provision relating to eligibility for third party beneficiary status to enforce certain violations of the license requires that a content owner must have had annual turnover for the prior three years in excess \$122.8MM from production, distribution, transmission of content, although it is likely that any content owner distributing content in commercial quantities would have an interest in the protection of such content. We would request that Applicant clarify the intent of this language

and modify its terms to reflect effective participation from all affected content owners in these important enforcement matters.

V. The Terms of the Applicants Vidi License Agreement Must Apply to the Applicants

An owner of a technology or a member of a technology consortium may have the ability under the consortium's rules to use the technology in its own products free of obligations or without taking a license. Alternatively, the member may control sufficient intellectual property to license decryption in downstream products independent of the consortium. Or a member may manufacture its own devices and not license the technology. Applicants should clarify that for any use of the Vidi technology, the Applicants are obligated to comply with the compliance and robustness rules of the Vidi license agreement equivalently to any other Adopter licensee of the Vidi technology.

VI. The Means of Handling Revocation Lists Should Be Addressed

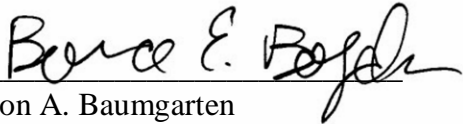
In order to effectuate revocation, it is necessary that a standardized means for delivering revocation information in the ATSC transport stream is developed and that FCC approval of any protected digital output and secure recording technology include obligations that Covered Demodulator Products and downstream devices properly receive, preserve, process, and convey downstream, as appropriate, such information. In its reply, Applicants should explain how they will deal with this issue.

* * *

We look forward to the Applicants' satisfactory responses on these issues, and to the Commission's ultimate authorization of Vidi on an interim basis for use in protecting digital broadcast content under the Broadcast Flag regulation.

Respectfully submitted,

THE MOTION PICTURE ASSOCIATION OF AMERICA, INC.
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PARAMOUNT PICTURES CORPORATION
SONY PICTURES ENTERTAINMENT INC.
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